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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/699,786
Filing Date: November 04, 2003
Appellant(s): WEEDMARK ET AL.

Terry W. Kramer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01/16/2008 appealing from the Office action

mailed 09/17/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any appeals, interferences, or judicial proceedings which ill directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6,111,881   Soncodi   08-2000

WO 98/49862   So et al.   11- 1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.

2.   Ascertaining the differences between the prior art and the claims at issue.

3.   Resolving the level of ordinary skill in the pertinent art.

4.   Considering objective evidence present in the application indicating

obviousness or nonobviousness.

3.   This application currently names joint inventors. In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

4.   Claims 1- 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Soncodi (US Patent 6,111,881, hereinafter Soncodi) in the view of So et al. (WO

98/49862).

Regarding claim 1, Soncodi discloses *a method of implementing an Active*

Connection Modify (ACM) for a connection in a communication system (Fig. 3, and Fig.

4), *the connection initially lying along an original connection* (Fig. 4, C20, C30, C50)

between a source node (C10) *and a destination node* (C60), *the original connection*

conforming with at least one original traffic parameter, the method comprising the steps.

establishing an alternate connection between the source node and the destination node

(Fig. 4, C20, C30, C50).;

determining whether the connection along the original connection must be torn

down (Col. 5, lines 22 –29); Soncodi discloses a method to release an original and

switch to an alternate path for different reason such network failure , route optimization

,QOS/bandwidth etc. The fact of switching to an alternate path for different reason is the

same as determining whether the connection along the original path must be torn town.

For example, if the original connection can support the new connection parameter

(bandwidth increase), there is no need to tear it down. This is the same function as

determine if the original connection must be torn down.

if the connection along the original connection must be torn down, switching the

connection to the alternate connection before tearing down the connection along the

original connection (Col. 5, lines 24 - 29). Soncodi discloses a non-preemptive method

to modify an active connection between a source and a destination and rerouting the

traffic to an alternate path before release the original connection in response to some

parameters (optimization, QOS/bandwidth, network failure etc.). This is the same

function as described by the instant application (Col. 5, lines 24 - 29). But, Soncodi

does not clear disclose *attempting to implement the ACM along the original connection.*

However, Son clearly teaches a method of managing the resource requirement

of an active connection (Page 3, lines 3 – 10).

Therefore, It would have been obvious to one of ordinary skill in the art at the

time the invention was made to manage the resource requirement of an active

connection to determine whether or not a requested bandwidth change will be granted

(Page 3, lines 20 –26).

Regarding claim 14, Soncodi discloses *a method of implementing an Active*

Connection Modify (ACM) for a connection in a communication system (Fig. 3, and Fig.

4), *the connection initially lying along an original connection* (Fig. 4, C20, C30, C50)

between a source node (C10) *and a destination node* (C60), *the original connection*

conforming with at least one original traffic parameter, the method comprising the steps.

establishing an alternate connection between the source node and the destination node (Fig. 4, C20, C30, C50).;

Soncodi also discloses a preemptive method and a non-preemptive method to create a new connect a release message is generating at the border nodes (B20, B30) (Col. 4, lines 65 – Col. 5, lines 43 -54).

Determining whether the ACM request includes a request that the connection be protected (Col. 4, lines 65 – Col. 5, lines 54). Soncodi discloses a method to release an original and switch to an alternate path for different reason such network failure, route optimization, QOS/bandwidth etc. The fact of switching to an alternate path for different reason is the same as determining whether the connection along the original path must be torn town. For example, if the original connection can support the new connection parameter (bandwidth increase), there is no need to tear it down. This is the same function as determine whether the request includes that the connection be protected.

Furthermore, the request has been receive from the user (B20), which determining whether the ACM request includes a request that the connection be protected; and if a protected modifies connection and switching the connection to the alternate connection and tearing down the original connection (Col. 5, lines 1 – 20). This is the same function as described by the instant application.

Soncodi discloses a non-preemptive method to modify an active connection between a source and a destination and rerouting the traffic to an alternate path before release the original connection in response to some parameters (optimization,

QOS/bandwidth, etc.). This is the same function as described by the instant application

(Col. 5, lines 24- 29). But, Soncodi does not clear disclose *attempting to implement the*

ACM along the original connection.

However, Son clearly teaches a method of managing the resource requirement

of an active connection (Page 3, lines 3 – 10).

Therefore, It would have been obvious to one of ordinary skill in the art at the

time the invention was made to manage the resource requirement of an active

connection to determine whether or not a requested bandwidth change will be granted

(Page 3, lines 20 –26).

Regarding claims 2 and 15, Soncodi discloses all the limitation of claim 2, except

the step of initiating a timer, and wherein the step of determining whether the

connection along the original connection must be torn down comprises determining

whether the timer expires before receipt of an ACM-related message at the source node

from another node along the original connection.

However, So teaches a method of initiating a timer by the network/user and

determine if the timer is expired before receipt the modify request at the source along

the original connection (Page 11, lines 28 – Page 12, lines 13).

Therefore, It would have been obvious to one of ordinary skill in the art at the

time the invention was made to combine the teaching of So into the teaching of Soncodi

for the purpose of managing resource requirement in a ATM network (abstract).

Regarding claims 3,4,16 and 17,Soncodi discloses the *step of establishing an alternate connection establishes an alternate connection so as to conform with the at least one original traffic parameter* (Col. 5, lines 24 – 29). The alternate connection is conformed to at least one parameter like QOS/bandwidth adjustment.

Regarding claims 6 and 19, Soncodi discloses a preemptive method where the alternate connection is to be maintained evenly in conformance with at least one original traffic parameter (Col. 4, lines 65 – Col. 5, lines 20). Soncodi also discloses a non-preemptive method that has the same function as a protected and enabling ACM where an alternate route is create with new parameters like QOS/bandwidth adjustment etc. Soncodi Further discloses the step of determine whether the connection is preemptive or not (Col.5, lines 21- 52).

Soncodi also discloses a preemptive method and a non-preemptive method to create a new connect a release message is generating at the border nodes (B20, B30) (Col. 4, lines 65 – Col. 5, lines 43 -54). Which is considered as a protected and enabling modify connection and switching the connection to the alternate connection and tearing down the original connection.

Soncodi fails to teach the *steps of monitoring for receipt of a MODIFY REJECT message at the source node; and if a MODIFY REJECT message is received at the source node.*

However, Son teaches a method where the network owner (source node) monitoring the "bandwidth change indication" and if the network cannot the adopt the

expected bandwidth the network owner (source node) release the connection or to reroute the connection (Page 13, lines 16 –19). Which is the same function as described by the instant application.

Regarding claims 5, 7, 18, and 20, Soncodi discloses a method to create a new connect a release message (Status) is generating at the border nodes (B20, B30) (Col. 5, lines 45 - 52). Which is considered as switching the connection to the alternate connection and tearing down the original connection.

Soncodi fails to teach the *steps of monitoring for receipt of a MODIFY REJECT message at the source node; and if a MODIFY REJECT message is received at the source node.*

However, Son teaches a method where the network owner (source node) monitoring the "bandwidth change indication" and if the network cannot the adopt the expected bandwidth the network owner (source node) release the connection or to reroute the connection (Page 13, lines 16 –19). Which is the same function as described by the instant application.

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of So into the teaching of Soncodi for the purpose of managing resource requirement in a ATM network (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of so into the teaching of Soncodi for the purpose of managing resource requirement in a ATM network (abstract).

Regarding claims 8 and 21, the method discloses by Soncodi is implement in an Asynchronous Transfer Mode communication system (Col. 1, lines 5 – 10).

Regarding claims 9 and 22, Soncodi discloses a PNNI for ATM, which has the same function as RSVP in MPLS network. But, Soncodi fails to teach MPLS communication system.

However, MPLS network is a well-known system in the art. Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a MPLS network to emulate some properties of a circuit-switched network over a packet-switched network. .

Regarding claims 10, 23 and 25 ,Soncodi in combination with Son disclose connection owner, which has the same function as an Active Connection Modify controller within a source for executing method of claims 1, 6,14 and 19 as described the instant application (Page 2, lines 29 –35).

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of So into the teaching of Soncodi for the purpose of managing resource requirement in a ATM network (abstract).

Regarding claims 11 and 26, Soncodi in combination with Son disclose connection owner, which has the same function as an Active Connection Modify controller within a source for executing method of claims 1, 6,14 and 19 as described the instant application (Page 2, lines 29 –35).

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of So into the teaching of Soncodi for the purpose of managing resource requirement in a ATM network (abstract).

Regarding claim 12, Soncodi in combination with Son disclose a computer-readable medium comprising instructions for executing the method claims 1 and 6. Because for executing the method of claims 1 and 6 the system must have a program installed on a memory.

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of So into the teaching of Soncodi for the purpose of managing resource requirement in a ATM network (abstract).

Regarding claim 13, Soncodi in combination with Son disclose a computer-readable medium comprising instructions for executing the method claims 1 and 6. Because for executing the method of claims 1 and 6 the system must have a program installed on a memory.

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of So into the teaching of Soncodi for the purpose of managing resource requirement in a ATM network (abstract).

(10) Response to Argument

Regarding Applicant's argument that Soncodi does not disclose, teach or suggest determining whether the connection "must' be torn down (i.e.) "cleared". Thus, Soncodi also does not disclose, teach or suggest a switching action that occurs if the above determination is made. The examiner respectfully disagrees. Soncodi discloses a nonpreemptive rerouting for establishing a new call path before the old path is terminated and preemptive for rerouting, establishing a new path after the old one is terminated. Determination of rerouting (switching) the traffic is based on a number of reasons, such as network failure, QOS bandwidth adjustment, fault recovery, route optimization etc... (Abstract, Col. 5, lines 20 -29, Col. 7, lines 29 -35 and Col. 9, lines 55 – 67). To achieve the rerouting for these reasons, the old path is required (i.e. "must") to be torn down. This same function is disclosed by the instant application, see page 2.

Soncodi also discloses a method to reroute traffic to a new path for different reasons such as fault recovery, route optimization, bandwidth adjustment and load balance (Abstract). Which means the same as determining whether or not if the old route must torn down for the reasons cited above and if it meets at least one of the

reason the traffic will be rerouted to a new route. Soncodi also discloses cleared the old

route (original path) (i.e.) torn down after the new route (alternate path) is established

(Col.2, lines 46 –59 and Col. 5, lines 25 –29). This means switching the traffic to new

route before tearing down the old connection otherwise the traffic will be lost.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Dady Chery

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